

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERNESTINA R. CRUZ, as guardian
ad litem for A.P., a minor child,

Plaintiff,

v.

No. 23-cv-270 KG/GBW

LA CLINICA DEL PUEBLO DE
RIO ARRIBA, MARGARET (AKA
“MARGO”) BRACE, in her individual
and professional capacities, and UNITED
STATES OF AMERICA,

Defendants.

ORDER

THIS MATTER comes before the Court on Defendant the United States’ Unopposed Motion for Summary Judgment as to all claims of Plaintiff Ernestina R. Cruz, as guardian ad litem for A.P., a minor child. Doc. 11. The Court, having reviewed the Unopposed Motion and being otherwise fully informed, finds the Motion well taken and therefore GRANTS the Motion.

As the Unopposed Motion provides and the parties agree, this Court lacks federal subject matter jurisdiction over this case because:

(A) Defendant La Clinica del Pueblo de Rio Arriba cannot be sued under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), as La Clinica is a federally supported health center immunized from liability under the Federally Supported Health Centers Assistance Act (FSHCAA), 42 U.S.C. § 233(g)–(n);

(B) Defendant the United States has not waived sovereign immunity under the FTCA in this case because Defendant Margaret (AKA “Margo”) Brace does not meet FSHCAA’s qualified contractor requirements under 42 U.S.C. § 233(g)(5), meaning the United States cannot be held liable for her alleged conduct; and

(C) Plaintiff’s state law tort claims against Defendant Brace do not satisfy the

requirements for supplemental jurisdiction (28 U.S.C. § 1367), federal question jurisdiction (28 U.S.C. § 1331), or diversity jurisdiction (28 U.S.C. § 1332).

As such, summary judgment is GRANTED in favor of the United States as to all of Plaintiff's claims, all of Plaintiff's claims are hereby DISMISSED without prejudice for lack of federal subject matter jurisdiction, and the Clerk is directed to mark this case CLOSED. *See, e.g.*, *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216 (10th Cir. 2006) ("[W]here the district court dismisses an action for lack of jurisdiction ... the dismissal must be without prejudice").

DATED: 11 July 2023



UNITED STATES DISTRICT JUDGE

SUBMITTED AND APPROVED BY:

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